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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,319	10/28/2004	Guenther Schubert	20496-445	6121
21890	7590	03/10/2005	EXAMINER	
PROSKAUER ROSE LLP PATENT DEPARTMENT 1585 BROADWAY NEW YORK, NY 10036-8299			KRUER, KEVIN R	
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/501,319

Applicant(s)

SCHUBERT ET AL

Examiner

Kevin R Kruer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7-13-2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

2. The information disclosure statement filed July 13, 2004 has been fully considered and an initialed copy of said PTO-1449 is enclosed herein.

***Drawings***

3. The drawings filed July 12, 2004 are accepted.

***Specification***

4. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
5. The first line of the specification should be amended to recite that the current application is a national stage application.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 5, and 6 are rejected under 35 U.S.C 102(b) as being anticipated by JP 11-130141A (herein referred to as Toyo).

Toyo teaches a foil having an outer aluminum foil layer of thickness 10-30um and an inner aluminum foil layer of thickness 12-60um. An intermediate resin layer (herein relied upon to read on the claimed "tear resistant polymer") is present between the two foils and a heat-sealing layer is laminated to the inner aluminum foil layer (abstract).

8. Claims 1, 3, 4, 7, and 8 are rejected under 35 U.S.C 102(b) as being anticipated by EP 0329336 (herein referred to as Balloni).

Balloni teaches a metallized flexible film comprising a metallized polypropylene homopolymer, which is herein relied upon to read on the claimed "tear resistant polymer" (abstract). The metal is preferably aluminum (page 3, lines 27+). The laminate may further comprise a heat sealable layer that is co-extruded with the polypropylene (page 3, lines 9-20) and a propylene layer between the polypropylene layer and the aluminum metallized layer (page 3, lines 9+).

9. Claims 1, 3, 7, and 8 are rejected under 35 U.S.C 102(b) as being anticipated by EP 0096581 (herein relied upon as Misasa).

Misasa teaches a laminated material comprising a layer composed of polyolefin, a layer composed of saponified ethylene vinyl acetate copolymer, a polyamide or a polyester, a vacuum deposited metal, and a layer of transparent resin (abstract). The metal is preferably aluminum (page 6, lines 9+). The polyolefin layer is herein relied upon to read on the claimed "tear resistant polymer." The EVA layer is herein relied upon to read on the "adhesion promoter layer" of claim 7.

10. Claims 1, 2, 4, and 6-8 are rejected under 35 U.S.C 102(b) as being anticipated by Eggen (US 3,291,377).

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Eggen teaches a laminate comprising a tear resistant intermediate layer (col 2, lines 1+), a pressure sensitive inner layer (col 2, lines 29+), and an outer layer of aluminum foil having a thickness of 0.0002-0.0006inches (col 2, lines 70+). The intermediate layer may comprise polyethylene terephthalate or polypropylene (col 2, lines 21+). The laminate may further comprise a plastic bonding material between the aluminum foil and the intermediate layer (col 3, lines 4+). Said layer is herein understood to read on the claimed "adhesion promoter layer" of claim 7. The examiner notes that while the prior art does not teach that the layer is co-extruded with the intermediate layer, the courts have held that a method of making a product does not patentably distinguish said product from a product in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the present application, no such showing has been made.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin R. Kruer  
Patent Examiner-Art Unit 1773